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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF NEVADA – RENO**

16
17 ALOHA MEDICINALS, INC.,) CASE NO.:
18 Plaintiff,)) DEPT. NO.:
19 vs.))
20 BIRKDALE MEDICINALS, INC., ANTHONY) **COMPLAINT FOR:**
21 "TOM" PETERS IN HIS INDIVIDUAL) (I) FALSE DESIGNATION OF ORIGIN –
22 CAPACITY AND IN HIS OFFICIAL) TRADEMARK INFRINGEMENT
23 CAPACITY AS AN OFFICER OF BIRKDALE) (15 USC § 1125(a)(1));
24 MEDICINALS, INC., DOES I-X,) (II) UNFAIR COMPETITION
25 AND ROE CORPORATIONS 1-X, inclusive,) (15 USC § 1125(a)(1);
26 Defendants.) (III) COMMON LAW TRADEMARK
27) INFRINGEMENT-UNFAIR COMPETITION;
28) (IV) UNJUST ENRICHMENT;
29) (V) BREACH OF THE COVENANT OF
30) GOOD FAITH AND FAIR DEALING;
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1) (VI) TORTIOUS INTERFERENCE WITH
2) PROSPECTIVE ECONOMIC ADVANTAGE
3) THROUGH DEFENDANT'S FRAUDULENT
4) MISREPRESENTATIONS;
5)
6) (VII) CIVIL CONSPIRACY;
7)
8) (VIII) FRAUD IN THE INDUCEMENT; and
9)
10) (IX) SPECIAL DAMAGES
11)
12) DEMAND FOR JURY TRIAL
13) (Rule 38(b) F.R.Civ.P)
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9 Plaintiff, Aloha Medicinals, Inc., by and through their counsel of record, complains and alleges
10 of Defendants as follows:

11 **PARTIES**

12 1. Plaintiff, Aloha Medicinals, Inc. ("Aloha Medicinals"), is and was domiciled in
13 Carson City County, Nevada at all relevant times herein.

14 2. Aloha Medicinals is and was a corporation organized and existing under the laws of the
15 State of Nevada at all relevant times herein.

16 3. On information and belief, Defendant Birkdale Medicinals, Inc., ("Birkdale") is a
17 Michigan Corporation having its principal place of business in Lake Orion, Michigan.

18 4. On information and belief, Defendant Anthony "Tom" Peters in his individual capacity
19 and in his official capacity as an officer of Birkdale resides in Lake Orion, Michigan.

20 5. The true names or capacities, whether individual, corporate, associate, representative, or
21 otherwise, of Defendants named herein as Does I-X and Roe Corporations I-X are unknown to Plaintiff
22 who, therefore, sue such Defendants by such fictitious name, and Plaintiff will amend this Complaint
23 to show their true names and capacities when the same have been ascertained.

24 6. At all times material hereto, each and every one of the Defendants named herein was
25 the agent, servant, employee, partner and/or joint venturer of each of the other Defendants, and each of
26
27
28

1 said Defendants was at all times acting within the course and scope of such agency, service,
2 employment, partnership and/or joint venturer.

3 **JURISDICTION OF THE SUBJECT MATTER**

4 7. This Court has original jurisdiction of the subject matter of Counts I and II of this
5 Complaint pursuant to Title 28 United States Code §§1331 and 1338(a) and pursuant to Title 15 United
6 States Code §1121(a). This Court has supplemental jurisdiction of the subject matter of the remaining
7 Counts III - IX pursuant to Title 28 United States Code §1367(a).

8 8. Count I is an action for false designation of origin, arising under the Trademark Laws of
9 the United States (The Lanham Act), Title 15 United States Code §1125(a)(1)(A). This Court has
10 original jurisdiction of the subject matter of Count I pursuant to Title 28 United States Code §§1331
11 and 1338(a) and pursuant to Title 15 United States Code §1121(a).

12 9. Count II is an action for unfair competition arising under the Trademark Laws of the
13 United States (The Lanham Act), Title 15 United States Code §1125(a)(1)(B). This Court has original
14 jurisdiction of the subject matter of Count II pursuant to Title 28 United States Code §§1331 and
15 1338(b).

16 10. Count III is an action for common law trademark infringement. As will appear more
17 fully below, the claim which is the subject matter of Count III is so related to other claims in this
18 action which are within the original jurisdiction of this Court, that they form part of the same case or
19 controversy under Article III of the United States Constitution. This Court has supplemental
20 jurisdiction of the subject matter of Count III pursuant to Title 28 United States Code §1367(a).

21 11. Count IV is an action for unjust enrichment. As will appear more fully below, the claim
22 which is the subject matter of Count IV is so related to other claims in this action which are within the
23 original jurisdiction of this Court, that they form part of the same case or controversy under Article III
24 of the United States Constitution. This Court has supplemental jurisdiction of the subject matter of
25 Count IV pursuant to Title 28 United States Code §1367(a).

1 12. Count V is an action for breach of the covenant of good faith and fair dealing. As will
2 appear more fully below, the claim which is the subject matter of Count V is so related to other claims
3 in this action which are within the original jurisdiction of this Court, that they form part of the same
4 case or controversy under Article III of the United States Constitution. This Court has supplemental
5 jurisdiction of the subject matter of Count V pursuant to Title 28 United States Code §1367(a).
6

7 13. Count VI is an action for tortious interference with prospective economic advantage
8 through Defendants' fraudulent misrepresentations. As will appear more fully below, the claim which
9 is the subject matter of Count VI is so related to other claims in this action which are within the
10 original jurisdiction of this Court, that they form part of the same case or controversy under Article III
11 of the United States Constitution. This Court has supplemental jurisdiction of the subject matter of
12 Count VI pursuant to Title 28 United States Code §1367(a).
13

14 14. Count VII is an action for civil conspiracy. As will appear more fully below, the claim
15 which is the subject matter of Count VII is so related to other claims in this action which are within the
16 original jurisdiction of this Court, that they form part of the same case or controversy under Article III
17 of the United States Constitution. This Court has supplemental jurisdiction of the subject matter of
18 Count VII pursuant to Title 28 United States Code §1367(a).
19

20 15. Count VIII is an action for fraud in the inducement. As will appear more fully below,
21 the claim which is the subject matter of Count VIII is so related to other claims in this action which are
22 within the original jurisdiction of this Court, that they form part of the same case or controversy under
23 Article III of the United States Constitution. This Court has supplemental jurisdiction of the subject
24 matter of Count VIII pursuant to Title 28 United States Code §1367(a).
25

26 16. Count IX is an action for special damages. As will appear more fully below, the claim
27 which is the subject matter of Count IX is so related to other claims in this action which are within the
28 original jurisdiction of this Court, that they form part of the same case or controversy under Article III

1 of the United States Constitution. This Court has supplemental jurisdiction of the subject matter of
2 Count IX pursuant to Title 28 United States Code §1337(a).

3 PERSONAL JURISDICTION

4 17. As will appear more fully below, Defendant Birkdale Medicinals, Inc. and Defendant
5 Anthony Peters (collectively, "Defendants") have significant contacts with the State of Nevada and this
6 District and its activities within the State of Nevada and this District and the effects of its activities
7 with the State of Nevada and this District are such that this Court may exercise personal jurisdiction
8 over Defendants consistently with the Constitution of the State of Nevada and the Constitution of the
9 United States. These contacts include marketing Defendants' products to consumers, located in
10 Nevada and within this District and elsewhere. These contacts also include providing Defendants'
11 products to consumers, located in Nevada and within this District and elsewhere and negotiating
12 contracts in Nevada.

13 VENUE

14 18. Plaintiff Aloha Medicinals has its principal office and place of business in Carson City
15 County, Nevada, and is doing business at this location.

16 19. A substantial part of the events giving rise to the claims which are the subject matter of
17 this action occurred in this District. The venue of this action is properly laid in this District pursuant to
18 Title 28 United States Code Section 1331(b) and (c).

20 GENERAL ALLEGATIONS

21 20. Plaintiff Aloha Medicinals business has consisted of and continues to consist of
22 manufacturing and selling high quality supplements to the general public in Nevada and elsewhere.

23 21. Since about 1999, Plaintiff Aloha Medicinals has used the trademark ALOHA
24 MEDICINALS for use in connection with the manufacturing and sale of dietary supplements.

25 22. Since about 2000, Plaintiff Aloha Medicinals has used the trademark IMMUNE-
26 ASSIST for use in connection with the manufacturing and sale of dietary supplements. The

1 IMMUNE-ASSIST trademark is the subject of Plaintiff's Federal Trademark Registration, Registration
2 No. 2,889,214, registered September 28, 2004.

3 23. Since about 2002, Plaintiff Aloha Medicinals has used the trademark IMMUNE-
4 ASSIST 247 for use in connection with the manufacturing and sale of dietary supplements.

5 24. Since about 2003, Plaintiff Aloha Medicinals has used the trademark PERFORMAX for
6 use in connection with the manufacturing and sale of dietary supplements.

7 25. Since about 2003, Plaintiff Aloha Medicinals has used the trademark CORDYCEPS
8 SINENESIS ALOHAENSIS for use in connection with the manufacturing and sale of dietary
9 supplements.

10 26. Since about 2004, Plaintiff Aloha Medicinals has used the trademarks LEVOLAR and
11 LEVOLAR FORTE for use in connection with the manufacturing and sale of dietary supplements.

12 27. Since about 2004, Plaintiff Aloha Medicinals has used the trademark RIDOXOLAN
13 PLUS for use in connection with the manufacturing and sale of dietary supplements.

14 28. Since about 2005, Plaintiff Aloha Medicinals has used the trademark BIO-
15 SILYMARIN for use in connection with the manufacturing and sale of dietary supplements.

16 29. Since about 2005, Plaintiff Aloha Medicinals has used the trademark K-9 IMMUNITY
17 for use in connection with the manufacturing and sale of dietary supplements particularly for use by
18 pets. The K-9 IMMUNITY trademark is the subject of Plaintiff's Federal Trademark Application,
19 Serial No. 77/559,806.

20 30. On information and belief Plaintiff believes Defendants may have entered into a
21 conspiracy with John Saleen to unlawfully provide fraudulent documents to the United States Trade
22 Mark Office, and Plaintiff will amend its Complaint to plead this allegation with more specificity after
23 additional discovery on this issue.

24 31. Plaintiff Aloha Medicinals' products are of uniformly high quality and Plaintiff has
25 acquired very significant commercial goodwill which is an important and very valuable asset of

1 Plaintiff's business. Based on such goodwill and the expenditures of large sums of money and efforts
2 for advertising and market promotion under its trademarks ALOHA MEDICINALS, IMMUNE-
3 ASSIST, IMMUNE-ASSIST 247, PERFORMAX, CORDYCEPS SINENESIS ALOHAENSIS,
4 LEVOLAR, LEVOLAR FORTE, RIDOXOLAN PLUS, BIO-SILYMARIN, and K-9 IMMUNITY,
5 (collectively "the ALOHA MEDICINALS TRADEMARKS"), Plaintiff Aloha Medicinals has become
6 recognized to consumers as providing dietary supplements of uniformly high quality.
7

8 32. Plaintiff has expended considerable sums of money in developing and maintaining
9 several websites since about 2001. These websites are recognized as one of the leading sources of
10 information on Plaintiff's products, and on the subject matter relating to these products as a whole, as
11 evidenced by the Google ranking which has remained within the top ten results for most keywords
12 associated with these products and the related subject matter. This high Google ranking has been
13 consistent since about 2005. Each page of these websites has been correctly noted as a Copyright of
14 Aloha Medicinals, with the appropriate date entered on each page as appropriate. Copyright
15 registration has been applied for.

16 33. On or about June 2005, Plaintiff entered into an oral agreement with said Defendants,
17 wherein Plaintiff and Defendants negotiated an Agreement for Defendants to distribute Plaintiff's
18 Human and Veterinary dietary supplement products (hereinafter, "Agreement"). In consideration
19 Plaintiff was to provide Defendants distribution rights of said products and technical support in the
20 form of clinical trial data and scientific data and advertising and marketing support.
21

22 34. The "Agreement" specifically sets the Defendants' obligations and provides for
23 Defendants to market and sell Plaintiff's products through Defendants' websites, through direct to
24 consumer sales and through other avenues of sale.

25 35. The "Agreement" specifically requires that Defendants will market Plaintiff's products
26 only in their original trade dress and bearing the name and logo of Plaintiff, and not be misrepresented
27 as being manufactured by Defendants or other parties, but bear all of Plaintiff's proper identification
28

1 and certification as allowed or required by law, such as Plaintiff's Organic Certification under the
2 USDA National Organic Certification Program, and manufacturer's name and address.

3 36. Plaintiff paid in excess of \$50,000.00 for advertising and packaging on behalf of
4 Defendants based upon Defendants' promises to not compete with and exclusively represent Plaintiff's
5 products.

6 37. On or about June 2008, Plaintiff contacted Defendants regarding Defendants' failure to
7 comply with the letter or intent of the distribution agreement, in that Defendants had started relabeling
8 Plaintiff's products under Defendants' own brand name, removing all identification of Plaintiff as
9 manufacturer, removed all Plaintiff's distinctive trade dress, name, address, and proper identification
10 as required or allowed by law.

11 38. As of August 2008, pursuant to the terms of the "Agreement" as modified verbally at
12 the Plaintiffs place of business in Carson City, NV, Defendants gave Plaintiff further assurances by
13 promising compliances with the "Agreement" specifically agreeing to follow Plaintiff's requirements
14 for labeling and representing the products to properly identify their source and not to cause confusion
15 with the public, and to comply with all ethical and legal requirements in regards to labeling and
16 product representation. In return, Plaintiff agreed to provide custom product packaging with
17 Defendants' company name and address, as well as provide nationwide advertising at Plaintiff's full
18 expense representing Defendants as the distributor of Plaintiff's products.

19 39. After Plaintiff took all action and expense in creating custom packaging for Defendants
20 and providing nationwide print advertising to support Defendants' distribution, marketing and sale of
21 Plaintiff's products, Defendants refused to relabel Plaintiff's products as agreed upon, but rather
22 retained Defendants' own brand name and misidentification of the products as being manufactured by
23 Defendants and not by manufacturer.

1 40. On information and belief, Defendants made these promises to Plaintiff knowing that
2 Defendants did not intend to perform in order to fraudulently induce Plaintiff to expend money and
3 resources for Defendants.

4 41. As of May 2009, Defendants were again notified that they could not continue to use
5 Plaintiff's trademarked names, or technical or clinical data, or customer goodwill unless they used
6 Plaintiff's packaging and trade dress as required and allowed by law. Due to Defendants' continued
7 breaches, Defendants were instructed to stop using Plaintiff's trademarks and technical and clinical
8 data by October 1, 2009 if Defendants remained unwilling to stop using Defendants' own branding and
9 trade dress on Plaintiff's products. Plaintiff offered to buy-back any remaining inventory from
10 Defendants so as not to create any undue hardship on Defendants while Defendants transitioned
11 entirely over to their own brand. Defendants refused to stop, and have continued distributing
12 Plaintiff's products under Defendants' own trade dress and brand name, and continue to use Plaintiff's
13 trademarks. Defendants also are manufacturing, or having manufactured, copy-cat products using
14 imported ingredients, and misrepresenting them to the public as being Plaintiff's authentic and
15 trademarked products, and selling them under Plaintiff's trademarked names, but in Defendants' trade
16 dress and brand name.

17 42. Defendants launched a marketing campaign on or about October 1, 2009, using all of
18 Plaintiff's copyrighted websites, clinical and technical data and publications, presenting them as
19 Defendants' own. Defendants continue to use Plaintiff's trademarks, and are manufacturing or having
20 manufactured for them products so labeled, using low cost imported materials and not Plaintiff's
21 authentic materials.

22 43. Defendants are misrepresenting to the public that the products Defendants are selling
23 are being manufactured by Plaintiff using Plaintiff's authentic and patent-protected materials, and
24 misrepresenting Defendants' inferior products as being the actual Plaintiff's authentic products which
25 were tested in clinical trials and published in scientific journals. Defendants' misrepresentations are

1 causing deception and confusion among the public who believe they are purchasing the authentic,
2 clinically proven, patented and trademarked products from Plaintiff, when in fact they are being
3 supplied copy-cat products made with untested, low cost imported material, while using the
4 trademarked names and using Plaintiff's own copyrighted scientific, technical and marketing support
5 materials in order to deceive the public.
6

7 44. Defendants have copied Plaintiff's website to the very last detail, including Plaintiff's
8 name and address and contact information, logo, trade dress and all other aspects of the website with
9 the sole exception of redirecting the "ORDER NOW" button to send the consumer to Defendants'
10 website, where they are offered the chance to purchase the counterfeit goods under Plaintiff's
11 trademarked names, which they have been reading about on what they think is the Plaintiff's website.
12 At no point is the consumer told they are buying a copy-cat product made with low cost imported
13 materials.
14

15 45. Plaintiff Aloha Medicinals is informed and believes that the website copying and
16 misbranding was done at the instruction of Defendants by, Jeff Peters, whom Plaintiff was told by
17 Defendants on many instances was the webmaster for Defendants.
18

19 46. On information and belief, Defendants are deceiving the public and unjustly enriching
20 themselves to the Plaintiff's detriment by misbranding these trademarked products as "MADE IN
21 AMERICA" and as "CERTIFIED USDA ORGANIC" when in fact they are cheap import copies and
22 not authentic American trademarked, patented and USDA Certified Organic goods.
23

24 47. Notwithstanding that Defendants have neither authorization to sell Plaintiff Aloha
25 Medicinals' products nor the right to use Plaintiff's ALOHA MEDICINALS TRADEMARKS,
26 Defendants have commenced an illicit campaign to represent themselves as Plaintiff Aloha Medicinals
27 to cause consumers to be confused and deceived as to the origin of their products.
28

1 48. Plaintiff has received many complaints from consumers complaining that their dogs
2 have been made sick from Defendants' inferior product. These consumers were confused about the
3 origin of the products and believed that their pets were made ill from Plaintiff's product.

4 49. Defendants have, in connection with the marketing and sale of nutritional supplements,
5 used in commerce, words and names and false designations of origin, in Nevada and elsewhere, which
6 are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or
7 association of Defendants with Plaintiff Aloha Medicinals, and which are likely to cause confusion, or
8 to cause mistake or to deceive as to the origin, sponsorship, or approval of Plaintiff Aloha Medicinals'
9 goods and commercial activities by Defendants.

11 50. Defendants' activities include the unauthorized use of Plaintiff's ALOHA
12 MEDICINALS TRADEMARKS including ALOHA MEDICINALS, IMMUNE-ASSIST, IMMUNE-
13 ASSIST 247, PERFORMAX, CORDYCEPS SINENESIS ALOHAENSIS, LEVOLAR, LEVOLAR
14 FORTE, RIDOXOLAN PLUS, BIO-SILYMARIN, and K-9 IMMUNITY.

16 51. Defendants have created websites bearing Plaintiff's ALOHA MEDICINALS
17 TRADEMARKS leading third party consumers to believe that they are viewing Plaintiff's websites
18 when in fact they are viewing Defendants' websites and leading consumers to believe they are
19 purchasing Plaintiff's products from Plaintiff when in fact they are purchasing Defendants' products
20 from Defendants.

22 52. In addition to displaying Plaintiff's ALOHA MEDICINALS TRADEMARKS visibly
23 on Defendants' websites to confuse and deceive consumers, Defendants have inserted Plaintiff's
24 ALOHA MEDICINALS TRADEMARKS into Defendants' websites as hidden metatags in order to
25 divert consumers to Defendants' websites.

26 53. Defendants' campaign to illicitly deceive consumers further includes bidding on
27 Plaintiff's ALOHA MEDICINALS TRADEMARKS, including ALOHA MEDICINALS and K9
28 IMMUNITY, within Google's® Awards® program to divert consumers attempting to purchase from

1 Plaintiff's to Defendants' websites where consumers are deceived into purchasing Defendants'
2 products believing Plaintiff to be the source for such products. Defendants' Google's® Awards®
3 advertisements use such terms as "Immune Assist Critical Care Formula – Click here to view our
4 Clinical Trials". When the consumer clicks on such an advertising link, they are directed to
5 Defendants' website where Defendants are presenting the Plaintiff's actual clinical trial data but
6 represented them as Defendants' own in an effort to deceive the consumer into purchasing Defendants
7 copy-cat product, believing it to be the authentic, clinically proven trademarked product made by
8 Plaintiff.

10 54. Moreover, Defendants' are misrepresenting the nature, characteristics, qualities, and
11 origin of Defendants' goods.

12 55. On information and belief, Defendants are claiming that their products contain a
13 patented hybrid Cordyceps when in fact Defendants' products do not contain any patented hybrid
14 Cordyceps.

16 56. Defendants are claiming that their Cordyceps Sinensis are the most potent in the world
17 because of being produced by Plaintiff's patented process when in fact Defendants' Cordyceps
18 Sinensis are not the most potent in the world and they are not made by Plaintiff's patented process.

19 57. Defendants are claiming that they are the only producer of Cordyceps Sinensis
20 Alohaenii when in fact Defendants do not produce "Cordyceps Sinensis Alohaenii" which is Aloha
21 Medicinals trademark name.

23 58. Defendants are claiming that their hybrid Cordyceps are 4x stronger than any other
24 when in fact Defendants' do not produce a hybrid Cordyceps and Defendants' Cordyceps are not 4x
25 stronger than any other.

26 59. Defendants identify their particular products as "Not an Import, All American" when in
27 fact Defendants' identified products are an import and not all American.
28

60. Defendants are referring consumers to Plaintiff Aloha Medicinals' research, scientific and clinical data and claiming such research, scientific and clinical data apply to Defendants' products when in fact Plaintiff Aloha Medicinals' research, scientific and clinical data do not apply to Defendants' products.

61. Based upon information and belief and with additional discovery this Complaint may be amended to include among others the following additional Defendants John Saleen, JHS Natural Products, Jeff Peters, Anthony (Tony) Peters, Mark Squibb, Whole Health Research Alliance, LLC.

COUNT I

FALSE DESIGNATION OF ORIGIN

62. Plaintiff Aloha Medicinals realleges paragraphs 1 through 61, inclusive, and incorporates them by reference as though specifically referred to herein.

63. This is a civil action for false designation of origin arising under the Trademark Laws of the United States, Title 15 United States Code § 1125(a)(1). This Court has original jurisdiction of the subject matter of this action pursuant to Title 28 United States Code §§ 1331 and 1338(a). Subject matter jurisdiction does not depend upon the amount in controversy or diversity of citizenship of the parties.

64. Defendants have, in connection with goods sold to consumers, used in commerce, words and names and false designations of origin, in Nevada and elsewhere, which are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiff Aloha Medicinals, and which are likely to cause confusion, or to cause mistake or to deceive as to the origin, sponsorship, or approval of Plaintiff Aloha Medicinals' goods and commercial activities by Defendants.

65. Plaintiff Aloha Medicinals believes that it has been damaged and/or is likely to be damaged by Defendants' aforesaid use of the aforesaid false words, names, and false designations of origin.

1 66. The damage suffered by Plaintiff Aloha Medicinals is and will be irreparable, because
2 of aforesaid loss and damage to Plaintiff Aloha Medicinals' aforesaid business reputation and goodwill
3 associated with its trademarks, and because the true extent of Plaintiff's monetary damages are not
4 readily ascertainable and will be provable only with great difficulty. Defendants' aforesaid activities
5 will continue until enjoined by this Court.
6

7 67. Defendants' activities, as aforesaid, were willful and intentional.

8 COUNT II

9 UNFAIR COMPETITION

10 68. Plaintiff Aloha Medicinals realleges paragraphs 1 through 67, inclusive, and
11 incorporates them by reference as though specifically referred to herein.

12 69. This is a civil action for false designation of origin arising under the Trademark Laws of
13 the United States, Title 15 United States Code § 1125(a)(1). This Court has original jurisdiction of the
14 subject matter of this action pursuant to Title 28 United States Code §§ 1331 and 1338(a). Subject
15 matter jurisdiction does not depend upon the amount in controversy or diversity of citizenship of the
16 parties.

17 70. Defendants commenced and continue their use Plaintiff's ALOHA MEDICINALS
18 TRADEMARKS, in order to palm off its goods in the State of Nevada, in this District and elsewhere,
19 as emanating from, or as the same as, or as sponsored, approved or licensed by Plaintiff.

20 71. Defendants have and continue to misrepresent the nature, characteristics, qualities, and
21 origin of Defendants' goods.

22 72. By virtue of Defendants' aforesaid palming off, false designation of origin, trademark
23 infringement and/or service mark infringement, and continued misrepresentation of the nature,
24 characteristics, qualities and origins of Defendants' goods, Defendants have unfairly competed and are
25 unfairly competing with Plaintiff Aloha Medicinals in the State of Nevada, in this District, and
26 elsewhere.

1 73. The damage suffered by Plaintiff Aloha Medicinals is and will be irreparable, because
2 of aforesaid loss and damage to Plaintiff Aloha Medicinals' aforesaid business reputation and goodwill
3 associated with its trademarks and because the true extent of Plaintiff's monetary damages are not
4 readily ascertainable and will be provable only with great difficulty. Defendants' aforesaid unfair
5 competition will continue until enjoined by this Court.
6

7 74. Defendants have greatly profited from its aforesaid unfair competition in the State of
8 Nevada, in this District, and elsewhere and has been unjustly enriched.

9 **COUNT III**

10 **COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

11 75. Plaintiff Aloha Medicinals realleges paragraphs 1 through 74, inclusive, and
12 incorporates them by reference as though specifically referred to herein.
13

14 76. This is a civil action for common law trademark infringement and unfair competition.
15 The claim which is the subject matter of this Count is so-related to the claims which is the subject
16 matter of Count I and II, that they form part of the same case or controversy under Article III of the
17 United States Constitution. This Court has supplemental jurisdiction of the subject matter of this
18 Count pursuant to Title 28 United States Code § 1337.
19

20 77. Plaintiff Aloha Medicinals' business has consisted and continues to consist of
21 manufacturing and selling nutritional supplements to consumers and distributors within Nevada and
22 elsewhere.
23

24 78. Plaintiff Aloha Medicinals is informed and believes, and on that information and belief
25 alleges that Defendants provide goods to the same market as Plaintiff Aloha Medicinals, under
26 Plaintiff's ALOHA MEDICINALS TRADEMARKS.
27

28 79. Defendants' use of Plaintiff's ALOHA MEDICINALS TRADEMARKS infringes
29 Plaintiff Aloha Medicinals' rights to the exclusive use of Plaintiff's ALOHA MEDICINALS
TRADEMARKS, because such use is likely to cause confusion, or to cause mistake, or to deceive as to
-15-

the affiliation, connection or association of Defendants with Plaintiff Aloha Medicinals, and is likely to cause confusion, or to cause mistake or to deceive as to the origin, sponsorship, or activities by Defendants.

80. Defendants have misrepresented and continue to misrepresent the nature, characteristics, qualities, and origin of Defendants' goods.

81. By virtue of Defendants' aforesaid palming off, false designation of origin, trademark infringement and/or service mark infringement, and continued misrepresentation of the nature, characteristics, qualities and origins of Defendants' goods, Defendants have infringed upon and continue to infringe upon Plaintiff's trademarks and unfairly competed and are unfairly competing with Plaintiff Aloha Medicinals in the State of Nevada, in this District, and elsewhere.

82. The damage suffered by Plaintiff Aloha Medicinals is and will be irreparable, because of aforesaid loss and damage to Plaintiff Aloha Medicinals' aforesaid business reputation and goodwill associated with its tradename, and because the true extent of Plaintiff's monetary damages are not readily ascertainable and will be provable only with great difficulty. Defendants' aforesaid activities will continue until enjoined by this Court.

83. Defendants' aforesaid trademark infringement and unfair competition was willful.

COUNT IV

UNJUST ENRICHMENT

84. Plaintiff Aloha Medicinals realleges paragraphs 1 through 83, inclusive, and incorporates them by reference as though specifically referred to herein.

85. Defendants acted to unjustly enrich themselves at Plaintiff's expense through their actions aforementioned, against fundamental principals of justice, equity and good conscience.

86. As the natural, actual, direct, and proximate result and cause of the intentional acts and/or omissions of Defendants, Plaintiff has damages in excess of Fifty Thousand Dollars

1 (\$50,000.00) including interest thereon in an amount to be determined at the time of the trial in this
2 matter.

3 COUNT V

4 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

5 87. Plaintiff Aloha Medicinals realleges paragraphs 1 through 86, inclusive, and
6 incorporates them by reference as though specifically referred to herein.

7 88. Plaintiff agreed to make special packaging for Defendants, and to place nationwide
8 advertising at Plaintiff's expense to generate sales for Defendants of Plaintiff's trademarked products,
9 in exchange for Defendants acting in good faith as a distributor of Plaintiff's trademarked goods.

10 89. Defendants, made numerous representations to Plaintiff that they would represent and
11 distribute Plaintiff's trademarked goods and not substitute other goods, misrepresented as Plaintiff's
12 authentic trademarked goods and to act in good faith as Plaintiff's authorized distributor.

13 90. As a result, Plaintiff has been damaged and has been required to retain attorneys to file
14 and prosecute this matter and has incurred, and will continue to incur, costs and attorneys' fees in an
15 amount not yet known but subject to proof. Upon prevailing in this action, Plaintiff shall be entitled to
16 an award of damages and reasonable costs and attorneys' fees.

17 COUNT VI

18 **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

19 **THROUGH DEFENDANTS FRAUDULENT MISREPRESENTATIONS**

20 91. Plaintiff Aloha Medicinals realleges paragraphs 1 through 90, inclusive, and
21 incorporates them by reference as though specifically referred to herein.

22 92. Defendants have a duty to conduct themselves in a reasonable manner and not to mis-
23 represent material facts to Plaintiff or mislead Plaintiff regarding same.

24 93. Defendant Tom Peters' statement that Defendants would sell only authentic goods
25 manufactured by Plaintiff and to not misbrand Plaintiff's goods with Defendants' own brand, unless

1 approved by Plaintiff. Peters' statement was intentionally and willfully made as evidenced by the fact
2 that at the time this promise was made by Defendants, the Defendants were already in negotiation with
3 an importer of Chinese raw materials, JHS Natural Products of Eugene, Oregon, to purchase raw
4 materials and produce a copy-cat counterfeit product, which Defendants at the time of the promise
5 intended to market tortuously using Plaintiff's trademark. Defendants made these statements to induce
6 Plaintiff to expend money on advertising, and packaging and provide other marketing support on
7 behalf of Defendants and to provide Defendants with access to proprietary information and products.

9 94. As the natural, actual, direct, and proximate result and cause of the acts and/or
10 omissions of Defendants, the Plaintiff has damages in excess of Fifty Thousand Dollars (\$50,000.00)
11 including interest thereon in an amount to be determined at the time of the trial in this matter.

12 95. It has become necessary for Plaintiff to engage the services of an attorney to prosecute
13 this matter. Plaintiff, therefore, is entitled to an award of attorney's fees as damages.

14 COUNT VII

15 CIVIL CONSPIRACY

16 96. Plaintiff Aloha Medicinals realleges paragraphs 1 through 95, inclusive, and
17 incorporates them by reference as though specifically referred to herein.

18 97. On information and belief Defendants' intentional conduct described herein was a
19 wrongful act of conspiring with John Saleen of JHS Natural Products to deceive the public through the
20 manufacture and supply of counterfeit products, manufactured using cheap imported materials, and
21 representing them as trademarked and patented authentic goods made in America by Plaintiff.

22 98. On information and belief, Defendants' intentional conduct was a wrongful act of
23 conspiring with web master, Jeff Peters and/or other unknown webmasters to deceive the public
24 through the copy and reproduction of more than 500 copyright pages of Plaintiff's website and from
25 Plaintiff's printed materials, and passing off these websites and printed materials as the property of
26 Defendants. All such copied website and printed materials have been improperly notated "Copyright
27
28

1 (date) Birkdale Medicinals" when in fact they were all properly marked in the original context as
2 "Copyright (date) Aloha Medicinals".

3 99. As the natural, actual, direct, and proximate result and cause of the intentional acts
4 and/or omissions of Defendants, Plaintiff has damages in excess of Fifty Thousand Dollars
5 (\$50,000.00) including interest thereon in an amount to be determined at the time of the trial in this
6 matter.

7 8 **COUNT VIII**

9 9 **FRAUD IN THE INDUCEMENT**

10 100. Plaintiff Aloha Medicinals realleges paragraphs 1 through 99, inclusive, and
11 incorporates them by reference as though specifically referred to herein.

12 101. Plaintiff alleges: (a) that Defendants made false representations to Plaintiff on numerous
13 occasions that they would represent and sell to the public only Plaintiff's authentic products, bearing
14 Plaintiff's tradenames and in Plaintiff's approved presentation and packaging; (b) such false
15 representations were made with Defendants' knowledge and/or belief that the representations were
16 false and/or with the knowledge that they had an insufficient basis for making the representations; (c)
17 that Defendants' intention was to induce Plaintiff to consent to the "Agreement's" formation; (d) that
18 Plaintiff justifiably relied upon said misrepresentation, and Plaintiff suffered and continues to suffer
19 damages resulting from such fraudulent misrepresentation.

20 102. On or about August 2008, Defendants promised Plaintiff that if Plaintiff agreed to
21 provide Defendants with advertising and specialized packaging for the exclusive use of Defendants,
22 Defendants would fully perform as agreed.

23 103. In consideration of the Defendants' promises, Plaintiff expended considerable time,
24 energy, effort and funds in excess of sixty thousand dollars for the benefit of Defendants. See, Exhibit
25 "A".

1 104. Specifically, Tom Peters stated on the telephone to John Holliday and Roger Scott:
2 "“My Cousin Tony (On information and belief Cousin Tony is known to all parties involved as Anthony
3 Peters, President of Detroit Sausage Company Inc. and a known participant in managing the course
4 and activities of Defendants.) will finance a major marketing effort of your products if you package the
5 products specifically for me with my company name and contact information. Tony has agreed to put
6 up \$100,000 but he wants you to help with the advertising and with the special packaging.”
7

8 105. On information and belief, at the time Tom Peters made these statements he knew that
9 they were false or were made with the intent to deceive Plaintiff because at the time, Tom Peters was
10 engaged in preparations to create directly competing products unbeknownst to Plaintiff.

11 106. The statements listed above induced Plaintiff's reasonable reliance thereon and was the
12 actual and proximate cause of the Plaintiff's damages alleged herein.
13

14 107. As the natural, actual, direct, and proximate result and cause of the acts and/or
15 omissions of Defendants, the Plaintiff has damages in excess of Fifty Thousand Dollars (\$50,000.00)
16 including interest thereon in an amount to be determined at the time of the trial in this matter.

17 108. It has become necessary for Plaintiff to engage the services of an attorney to prosecute
18 this matter. Plaintiff is therefore entitled to an award of attorney's fees as damages.
19

20 109. As a direct result of the intentional, willful, and malicious conduct, committed with
21 oppression and/or reckless disregard for the consequences by Defendants, Plaintiff is entitled to
22 punitive damages in an amount to be determined by this court.
23

COUNT IX

SPECIAL DAMAGES

25 110. Plaintiff Aloha Medicinals realleges paragraphs 1 through 109, inclusive, and
26 incorporates them by reference as though specifically referred to herein.
27

28 111 Plaintiff has been required to obtain legal services in connection with the present action
and has incurred attorneys' fees and costs, and will continue to incur fees and costs in the future.
29

112. The attorneys' fees that Plaintiff has and will incur are the natural and proximate
consequence of the wrongful conduct referred to above and in the first through eighth causes of action.

3 **PRAYERS FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

5 1) For a temporary restraining order and a preliminary and permanent injunction,
6 restraining Defendants its officers, agents, servants, employees and attorneys and those persons in
7 active concert or participation with it from further acts of false designation of;

9 2) For a temporary restraining order and a preliminary and permanent injunction,
10 restraining Defendants its officers, agents, servants, employees and attorneys and those persons in
11 active concert or participation with it from misrepresenting the nature, characteristics, qualities, or
12 geographic origin of Defendants' goods;

13 3) For its reasonable costs and attorneys fees herein incurred;

15 4) For judgment against Defendants in the amount of its damages in consequence of the
16 aforesaid false designation of origin and misrepresentations, to the extent such damages can be
17 ascertained;

18 5) For punitive damages in a sum to be fixed by the Court, in consequence of Defendants'
19 willful false designation of origin, as aforesaid;

21 6) For special damages to be determined at the time of trial; and

22 7) For such other and further relief as the Court shall deem meet and proper in the
23 premises.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff Aloha Medicinals demands a jury trial in accordance with Rule 38(b) F.R.Civ.P.

26 DATED this 29th day of October, 2009.

27 By:


28 PATRICK O. KING, ESQ.
Attorneys for Plaintiffs Aloha Medicinals, Inc.